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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 SHELLEY R. ROBINSON; and
ELIZAVETA M. HUNSINGER, by and
13 through her Conservator IVAN J.
HUNSINGER

14 Plaintiffs,

15 v.

16 DAIMLERCHRYSLER AG;
DAIMLERCHRYSLER MOTORS
17 COMPANY LLC; DAIMLERCHRYSLER
CORPORATION; and DOES ONE through
18 FIFTY, inclusive,

19 Defendants.
20 _____/

Case No. C 07-03258 SC

PLAINTIFFS' OPPOSITION TO
DEFENDANT DAIMLER AG's RENEWED
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION, OR, IN THE
ALTERNATIVE, REQUEST TO ALLOW
JURISDICTIONAL DISCOVERY

Date: March 7, 2008
Time: 10:00 a.m.
Courtroom: 1
Judge: Hon. Samuel Conti

Complaint Filed: 6/20/07
Trial Date: 1/12/09

21 I. INTRODUCTION

22 This case stems from a motor vehicle accident involving a 1998 Jeep Cherokee. Daimler
23 AG maintains, and Plaintiffs have no evidence to the contrary, that Chrysler Corporation
24 designed, manufactured, and distributed the subject vehicle. However, Daimler AG overlooks a
25 claim made by Plaintiffs in this case that the defendants were negligent during the time period
26

1 after the distribution and initial sale of the subject vehicle, for not giving the customers an option
2 of retrofitting their vehicles with electronic stability control. In 1998 Daimler-Benz "merged"
3 with Chrysler, forming a corporation named "DaimlerChrysler AG", which in 2007 became
4 Daimler AG. For the purposes of this motion, the relevant inquiry is whether or not
5 DaimlerChrysler AG had sufficient minimum contacts to establish specific personal jurisdiction
6 over them during the time period from 1998 to the time of the subject accident.

7 Daimler AG also overlooks the "agency" theory, through which the minimum contacts of
8 a subsidiary entity can be imputed to the foreign parent entity. The cases cited by Daimler AG
9 deal with the "alter-ego" theory, which is not the exclusive theory through which minimum
10 contacts can be established for a foreign parent company, and it is completely inapplicable to
11 DaimlerChrysler Motors Company LLC because that entity is not a corporation.

12 Under the "agency" theory, the minimum contacts of DaimlerChrysler Corporation and
13 DaimlerChrysler Motors Company LLC are imputed to their parent company, DaimlerChrysler
14 AG. Those two American entities were, in reality, the Chrysler division, or Chrysler branch, of
15 DaimlerChrysler AG. They were agents for DaimlerChrysler AG engaging in activities that, but
16 for their existence, DaimlerChrysler AG would have to undertake itself. DaimlerChrysler AG
17 was a merged corporation from former Chrysler Corporation and Daimler-Benz AG, converting
18 the shares of both predecessor corporations to DaimlerChrysler AG, and combining the two prior
19 corporate functions into one. DaimlerChrysler AG created a management structure consisting of
20 a Supervisory Board, and a Board of Management, that had the responsibility for managing both
21 the Mercedes division and the Chrysler division. While the "Chrysler division" maintained its
22 physical location Michigan, the management of this division, and the hiring of executives in
23 Michigan, was done by the Board of Management of DaimlerChrysler AG.

1 **II. FACTS**

2 **A. The formation of DaimlerChrysler AG**

3 DaimlerChrysler AG was formed in 1998, as a result of the merger between
4 Daimler-Benz AG and Chrysler Corporation that closed on November 12, 1998. As a result of
5 the Merger, all shareholders of Chrysler Corporation and all shareholders of Daimler-Benz AG
6 became shareholders of the new company, DaimlerChrysler AG. Chrysler Corporation's
7 shareholders received approximately 42% of DaimlerChrysler AG outstanding shares and
8 Daimler-Benz AG shareholders received approximately 58% of those shares. (See Tracinda
9 Corp. v. DaimlerChrysler AG (D. Del. 2005) 364 F.Supp.2d 362, 380).

10
11 **B. The Supervisory Board**

12 In accord with German law, DaimlerChrysler AG had a two tier system consisting of a
13 Supervisory Board and a Management Board. The Supervisory Board appointed and removed
14 members of the Management Board, oversaw the management of the company, and was
15 ultimately responsible for significant corporate transactions like major asset sales and
16 acquisitions. From the time the Merger was completed, through and including November 27,
17 2000, half of the shareholder representatives on the DaimlerChrysler AG Supervisory Board were
18 those originally designated by Chrysler Corporation and half of the shareholder representatives
19 were those originally designated by Daimler-Benz AG. (See Tracinda Corp., 364 F.Supp.2d 362,
20 380-381).

21
22 **C. The Board of Management**

23 In contrast to the Supervisory Board, the Management Board managed the daily
24 operations of the company. The DaimlerChrysler AG Management Board initially consisted of
25 18 members, ten of whom were designated by Daimler-Benz AG, and eight of whom were
26

1 designated by Chrysler Corporation. The Management Board functioned as a board of equals
2 with collective responsibility for the operations of the company. (See Tracinda Corp, 364
3 F.Supp.2d 362, 381).

4
5 **D. Operating Structure of DaimlerChrysler AG**

6 DaimlerChrysler AG maintained two operational headquarters, one located at the former
7 Chrysler Corporation headquarters in Auburn Hills, Michigan and the other at the former
8 Daimler-Benz AG headquarters in Stuttgart, Germany. The overlapping corporate functions of
9 Daimler-Benz AG and Chrysler Corporation were combined. (See Tracinda Corp, 364 F.Supp.2d
10 362, 382).

11 Chrysler Corporation was renamed to DaimlerChrysler Corporation, which became a
12 subsidiary of DaimlerChrysler Motors Company LLC (formerly DaimlerChrysler Motors
13 Corporation) (See Declaration of Louann Van Der Wiele at ¶¶ 8-12). In 2000, Dieter Zetsche
14 was appointed by the Board of Management of DaimlerChrysler AG to be the CEO of
15 DaimlerChrysler Corporation, after the Management Board terminated his predecessor. (See
16 Tracinda Corp, 364 F.Supp.2d 362, 384-386). The Chrysler brands were kept together in a
17 separate, independent unit of DaimlerChrysler AG and the Daimler brands were similarly
18 separated. Chrysler was referred to in financial reports, in internal memoranda, in shareholder
19 meetings, and in press releases as a "division" of DaimlerChrysler AG. DaimlerChrysler
20 Corporation and DaimlerChrysler Motors Company LLC constituted a U.S. division of
21 DaimlerChrysler AG where vehicle design, procurement, production, and marketing was
22 overhauled through the management of the DaimlerChrysler AG Board of Management. (See
23 Tracinda Corp, 364 F.Supp.2d 362, 382-383, 387).

1 III. ARGUMENT

2 **A. This Court has specific personal jurisdiction over Daimler AG through the**
 3 **contacts of DaimlerChrysler Motors Company, LLC, which acted as an**
 4 **agent of DaimlerChrysler AG.**

5 Due process requires that the defendant have certain minimum contacts with the forum
 6 state such that the maintenance of the suit does not offend the traditional notions of fair play and
 7 substantial justice. International Shoe Co. v. Washington (1945) 326 U.S. 310, 316. The
 8 minimum contacts of a nonresident's agents are ordinarily imputed to the principal. See Ochoa v.
 9 J.B. Martin & Sons Farms, Inc. (9th Cir. 2002) 287 F.3d 1182, 1189. In the context of a parent-
 10 subsidiary relationship, an agency relationship is established for jurisdictional purposes if the
 11 plaintiff makes a "prima facie showing that the subsidiary represents the parent corporation by
 12 performing services 'sufficiently important to the parent corporation that if it did not have a
 13 representative to perform them, the parent corporation would undertake to perform substantially
 14 similar services.' The agency test permits the imputation of contacts where the subsidiary was
 15 'either established for, or is engaged in, activities that, but for the existence of the subsidiary, the
 16 parent would have to undertake itself.'" Harris Rutsky & Co. Ins. Services, Inc. v. Bell &
 17 Clements Ltd (9th Cir. 2003) 328 F.3d 1122, 1135 (quoting Chan v. Society Expeditions, Inc. (9th
 18 Cir. 1994) 39 F.3d 1398, 1405-1406; Wells Fargo & Co. v. Wells Fargo Express Co. (9th Cir.
 19 1977) 556 F.2d 406, 422-424; and Gallagher v. Mazda Motor of America, Inc. (E.D.Pa. 1992)
 20 781 F.Supp. 1079, 1083); see also Meier ex rel. Meier v. Sun Intl. Hotels, Ltd. (11th Cir. 2002)
 21 288 F.3d 1264, 1275.

22 During the time period between 1998 and the subject accident, DaimlerChrysler
 23 Corporation and DaimlerChrysler Motors Company LLC were engaged in activities that, but for
 24 their existence, DaimlerChrysler AG would have to undertake itself. DaimlerChrysler AG was a
 25 merged entity that combined the corporate functions of Daimler-Benz AG and Chrysler
 26 Corporation, wherein the daily operations of DaimlerChrysler AG were managed by its Board of

1 Management, which was composed of former executives from Daimler-Benz AG and Chrysler
2 Corporation. Shares of both Chrysler Corporation and Daimler-Benz AG were converted to
3 shares of DaimlerChrysler AG. As part of this "merger", new entities were created to run the
4 operational headquarters in Michigan according to the orders and direction of DaimlerChrysler
5 AG. These entities, known as the "Chrysler Group", were DaimlerChrysler Corporation and
6 DaimlerChrysler Motors Company LLC (formerly DaimlerChrysler Motors Corporation). The
7 Board of Management of DaimlerChrysler AG had the power to terminate and appoint
8 executives, including the CEO of DaimlerChrysler Corporation, which they did when they
9 appointed Dieter Zetsche as CEO, and terminated his predecessor. The "Chrysler Group", was a
10 branch or division of DaimlerChrysler AG. They were referred to as a "division" of
11 DaimlerChrysler AG in financial reports, internal memoranda, shareholder meetings, and in press
12 releases. DaimlerChrysler AG, through its Board of Management, overhauled the Chrysler
13 Group in their vehicle design, procurement, production, and marketing. DaimlerChrysler AG
14 owned the Chrysler Group in whole, it managed the Chrysler group through the DaimlerChrysler
15 AG Board of Management, and it controlled the Chrysler Group as its own division. But for the
16 creation of DaimlerChrysler Corporation and DaimlerChrysler Motors Company LLC, all of the
17 operations of the former Chrysler headquarters in Michigan would have to be performed by
18 DaimlerChrysler AG, and most of them in fact were. (See Tracinda Corp. v. DaimlerChrysler AG
19 (D. Del. 2005) 364 F.Supp.2d 362 (attached as Exhibit 1 to Van Blois Decl.).

20 The cases cited by Defendant, U.S. Vestor and Von Grabe, do not address the agency
21 issue, but rather address the "alter-ego" theory of jurisdiction. Under theory, a plaintiff can
22 overcome the "presumption of corporate separateness" and "piece the corporate veil" to get to
23 the parent. However, the alter-ego theory is not applicable to DaimlerChrysler Motors Company
24 LLC because that entity is not a corporation. More important, the alter-ego theory is not
25 exclusive, and the minimum contacts of a subsidiary can be imputed to its parent company under
26

1 the agency theory.

2 Asserting jurisdiction of DaimlerChrysler AG in this case would not offend the traditional
3 notions of fair play and substantial justice. This parent company completely controlled and
4 dominated the affairs of their "division" called the Chrysler Group. DaimlerChrysler AG
5 managed and directed the Chrysler Group, through which they were allowed to reap the benefits
6 of their marketing, distribution, and presence in the U.S. DaimlerChrysler AG cannot now
7 complain of being subject to suit here.

8
9 **B. In the alternative, this Court should allow Plaintiffs to conduct discovery
10 limited to jurisdictional issues.**

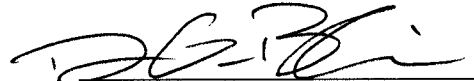
11 Without the benefit of having conducted any discovery, without the knowledge of how
12 decisions were made regarding the defendants' use and non-use of electronic stability control in
13 Chrysler vehicles, and without access to defendants' records and witnesses related to the
14 jurisdictional issues presented in the motion, Plaintiffs are slightly handicapped in their ability to
15 oppose Defendant's motion. To the extent that there is issue regarding the adequacy of the
16 documents submitted in support of this opposition, or to the extent that additional information is
17 necessary to make out a prima facie case of a principal-agent relationship, Plaintiffs should be
18 permitted to conduct discovery limited to jurisdictional issues.

19 IV. CONCLUSION

20 For the above reasons, Defendant Daimler AG's motion to dismiss should be denied, or,
21 in the alternative, the hearing of this matter should be continued approximately 60 days to permit
22 discovery on jurisdictional issues.

23 Dated: February 15, 2008

VAN BLOIS & ASSOCIATES

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25 Darren J. Van Blois,
26 Attorneys for Plaintiffs